IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 329 OF 2006

CAPT. LANCE IRWIN LOBO, CALANGUTE, BARDEZ GOA. ....Appellant

Versus

THE STATE OF GOA THROUGH THE PUBLIC PROSECUTOR, HIGH COURT OF BOMBAY AT GOA, PANAJI BENCH. ....Respondent

Mr. N. Costa Frias, Advocate for the Appellant.
Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 19th September, 2006

P.C.

Heard Shri Costa Frias, the learned Counsel on behalf of the applicant-accused and the learned Public Prosecutor Ms. Coutinho on behalf of the respondent/Complainant.

2. The applicant-accused is being prosecuted in C.C. no. 156/05 under Sections 324, 427 and 504 I.P.C. The case is pending trial. An application dated 02.09.2006, filed by the accused seeking permission to go to USA, has been rejected by the learned J.M.F.C. by Order dated 15.09.2006. Hence the applicant has invoked Section 482 of the Code of Criminal Procedure, 1973, to assail the said Order. It appears that the applicant-accused is also prosecuted in C.C. no. 24/06 under Section 447 and 341 I.P.C., in which another learned J.M.F.C. has granted him permission to leave the country to go to USA for medical reasons upon the accused furnishing surety in the sum of Rs.10,000/-.

3. The learned J.M.F.C. by the impugned Order dated 15.09.2006, has expressed her apprehension, that in case the accused is permitted to leave

the country, there is every possibility that he might not return to India and that will delay the trial of the case.

4. The applicant-accused has filed an affidavit and in the said affidavit, the applicant-accused has set out that he holds an Indian Passport and although he is a green card holder, he has substantial assets and interests in India. He has stated that he operates two tourist resorts, one named as Capt. Lobo's Hideway at Calangute and the other Capt. Lobo's Jungle Hideway at Vazare, Maharashtra, and resides at Cobrawado, Calangute, along with his wife. He has stated that the air tickets which were earlier booked for 16th instant, have now been booked on 23rd instant.

5. Considering the facts stated in the application, the apprehension expressed by the learned J.M.F.C. by her impugned Order dated 15.09.2006, appears to be more imaginary than real. In any event, such apprehension could also be taken care of by insisting that the accused executes an additional bond in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the learned J.M.F.C., Mapusa. In view of the above, the impugned Order dated 15.09.2006, is hereby set aside and the application dated 02.09.2006 of the applicant-accused filed before the learned J.M.F.C., Mapusa, is granted on the above terms. In case applicant-accused has not sought exemption from personal appearance, the applicant-accused shall file an application before the learned J.M.F.C. and the learned J.M.F.C. shall consider the same on its own merits.

6. Authenticated copy be furnished to the applicant-accused on payment of necessary charges.

N. A. BRITTO, J.

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